

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of June, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 1611 of 1987

B.M. Rajashekarappa,
s/o Mahalingappa,
resident of Arabilichi
Village, Bhadravathi Tq.,
Shimoga District

..Petitioner

(By Sri N.B. Nijalingappa, Adv.,)

-Vs-

1. The Deputy Commissioner, Shimoga;
2. The Administrator, Arabilichi
Group-Village Panchayath,
Arabilichi;
3. Divisional Commissioner,
Bangalore Division,
Bangalore;
4. H.M. Rudrappa,
s/o Mallappa;
5. H.M. Jayanna,
s/o Mallappa;

Respondents 4 and 5 are the residents
of Arabilichi Village, Bhadravathi Tq.,

.. Respondents

(By Sri A. Nagarajappa, AGA, for R1 & R3;
Sri T.S.Ramachandra & Sri G.K.Shevgoor,
Advocates for R4 and R5)

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Writ Petition is filed praying to quash the order dated 31-12-1986 passed by the third respondent in case No.VPC. Appeal 1/1986-87 (Annexure-D).

This writ petition coming on for hearing this day, the Court made the following:-

O R D E R

The petitioner claims that he and three other persons (Basappa, Murugappa and Malleshappa) are in possession and enjoyment of a Gramathana land belonging to Arabilichi Village Panchayat measuring East to West $\frac{60' + 30'}{2}$ and North to South 170' lying between Sy.No.201 of Arabilichi Village and K.K. Road (hereinafter referred to as 'the disputed land') from the days of their grand-father, ^{and using it} ~~as~~ manure pit. They allege that the father of respondents 4 and 5 purchased Sy.No.201 in the year 1938 under a sale deed dated 7-6-1938 and in the said sale deed the eastern boundary of the said property is mentioned as manure pit; that respondents 4 and 5 obtained conversion of one acre in Sy.No.201 (out of the total extent of 9 acres 12 guntas) to non-agricultural purpose in the year 1980 and constructed a rice mill in the said land; and that the said rice mill land lies to the West of the ~~portion of the~~ disputed land, claimed by the petitioner. Petitioner further alleges that respondents 4 and 5 started disturbing the peaceful

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possession of the disputed land, after construction of their rice mill; that having failed in their attempts to dislodge the petitioner and others from the said land, they filed O.S.No.160/1983 in the Court of the Munsiff, Bhadravathi for declaration and permanent injunction; that the Civil Court held that respondents 4 and 5 were not the owners of the land and, therefore, dismissed the suit; that the appeal filed by respondents 4 and 5 in R.A.No.5/1983 before the Civil Judge, Bhadravathi, is still pending; that to overcome the judgment and decree in O.S.No. 160/1983, respondents 4 and 5 have approached the first respondent for grant of the said land; that petitioner and three others had applied to the second respondent on 6-4-1985 (Annexure-B) for grant of the said land; that the first respondent, without following ^{due} ~~the~~ process, and ignoring the application of the petitioner, directed the second respondent to grant the subject land to respondents 4 and 5, as per his order dated 14-3-1986 (Annexure-C); that the first respondent issued the said direction on the basis of the report of the Assistant Commissioner, Shimoga; that Assistant Commissioner had not held proper enquiry; and that the second respondent Village Panchayat has not passed any resolution granting the subject land to respondents 4 and 5. Feeling aggrieved by the said

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order of the Deputy Commissioner (Annexure-C) the petitioner filed an appeal before the third respondent under Section 206 of Karnataka Village Panchayats and Local Boards Act 1959. The said appeal was dismissed by the third respondent as per order dated 31-12-1986 (Annexure-D). Feeling aggrieved, petitioner has filed this petition for quashing Annexure-D. The petitioner has also sought stay of Annexures-C & D pending disposal of the petition and this Court on 6-2-1987 granted interim stay of Annexures-C and D.

2. Respondents 4 and 5 have filed their objections.

They have contended that the ^{area} ~~manure pit~~ referred to as ^{the manure pit} ~~an item~~ in the eastern boundary of Sy.No.201 in the sale deed in favour of the father of respondents 4 and 5 is not the subject land; that the manure pit referred to in the sale deed was situated on the North-Eastern side of Sy.No.201; that neither the petitioner nor any one else is in possession of the subject land; that on their application, the second respondent had granted the said land to respondents 4 and 5 in the year 1975 and as directed by the Panchayat they had paid a sum of Rs-720/- towards the value of the subject land on 10-3-1975; that

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they have been in possession and enjoyment of the subject land; that possession thereof was absolutely necessary for the purpose of running their rice mill; that the second respondent Panchayat issued a grant certificate on 12-3-1975 (Annexure-3) in favour of fourth respondent; that in view of the interference by the petitioner on account of enmity towards respondents 4 and 5, they filed a suit against petitioner in O.S.No.160/1983 for an injunction; that suit was dismissed on the ground that the subject land still belonged to Arabilichi Village Panchayat as the grant in favour of fourth respondent by the second respondent Panchayat was not with¹the prior permission of the Deputy Commissioner as required under law; that in view of the decision of the learned Munsiff, without prejudice to the pending appeal, they also applied to the second respondent for regrant after following due procedure; that the second respondent Panchayat accordingly recommended grant to fourth respondent and the papers were sent to¹the B.D.O. and with his recommendation the matter was placed before the Assistant Commissioner; that the Assistant Commissioner after local inspection found that there was no manure pit in the subject land and recommended grant of the

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subject land to respondents 4; and that the Deputy Commissioner, Shimoga after due consideration passed the order dated 14-3-1986 (Annexure-C) granting permission to the second respondent to grant the subject land to fourth respondent and in pursuance of it, the second respondent passed a resolution dated 1-4-1986 (Annexure-4) granting the subject land to respondents ⁴ 4 and ~~5~~; and that there is no irregularity in the grant and therefore the Divisional Commissioner was justified in rejecting the appeal filed by the petitioner.

3. The petitioner has made it appear that he was in possession of the subject land and that the same was being used as a manure pit; that he had applied for allotment of the land on 6-4-1985 along with some others and respondents 4 and 5 had also applied for allotment in or about the said time and that grant was made on the permission of the Deputy Commissioner without considering the application filed by the petitioner and others for allotment. The correct position is completely different. Firstly, the subject land is not the manure pit as is evident from the boundaries of the land mentioned in the sale

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deed executed in favour of the father of respondents 4 and 5. Respondent 4 had made an application for allotment of the subject land situated to the East of the rice mill and having considered the said request and having regard to the fact that respondents 4 and 5 had paid a sum of Rs.720/- towards the cost, the Panchayat granted the said land to respondents 4 and 5 under grant certificate dated 12-3-1975 (Annexure- 3). As the Civil Court did not consider the grant as valid without the prior permission of the Deputy Commissioner, fourth respondent again sought grant and the Village Panchayat recommended grant and sought permission of the Deputy Commissioner. The Deputy Commissioner having considered the facts and circumstances and the report of the Assistant Commissioner, has rightly granted permission to the Panchayat to grant the subject land to Respondents 4 and 5. In fact the Assistant Commissioner's report clearly showed that there was no manure pit in the subject land and petitioner was not in possession of the same. It is significant that the three other persons who were said to be using the subject land as manure pit along with the petitioner, have not joined in this petition. In fact, the Deputy Commissioner has

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granted permission for grant of the subject land at a price of Rs.75/- per square feet instead of Rs.720/- earlier paid by respondent No.4 and as a consequence, fourth respondent also paid a sum of Rs.2,100/- to the second respondent on 1-4-1986 (vide receipt at Annexure-5) as fixed by the Deputy Commissioner and thereafter the second respondent issued a fresh grant certificate dated 1-4-1986 (Annexure-6). It is thus seen that there is no irregularity in the process of grant made in favour of respondent No.4 nor is there any irregularity or error on the part of the Deputy Commissioner in giving permission for such grant. The rice mill of respondents 4 and 5 is situated next to the subject land. The inspection report and the documents clearly disclose that the same was not being used as a manure pit by the petitioner, but was being used by the Rice Mill. Having considered the facts and circumstances, the Panchayat had decided to grant the subject land to respondent No.4 and accepting the recommendations, the Deputy Commissioner granted permission for such grant. Thereafter the Panchayat has granted the subject land to respondents 4 and 5. As no irregularity

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or infirmity is made out and as the facts alleged by petitioners are incorrect, I find no reason to interfere with Annexure-D. Significantly, the petitioner has not sought quashing of Annexure-C dated 14-3-1986. Be that as it may.

4. In view of the above, the petition is dismissed with costs of Rs.250/- payable to respondents 4 and 5.

Sd/-
JUDGE



bnr/ujk